

APPEAL NO. 022896  
FILED JANUARY 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on October 23, 2002. The hearing officer determined that respondent 2 (claimant herein) sustained a compensable injury on \_\_\_\_\_; that the claimant had disability from December 22, 2000, through January 12, 2001; and that at the time of the injury the claimant was an employee of the appellant, (college herein) for workers' compensation purposes. The college appeals, contending that the claimant was employed by a security service at the time of her injury and that respondent 1 (carrier herein), the workers' compensation carrier for the security service, is liable for this claim. The carrier responds that the hearing officer correctly determined that the college was liable for this claim. There is no response from the claimant to the college's appeal.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The issue before us on appeal is the identity of the employer at the time of the claimant's injury. No party is really disputing the issues of injury and disability, and there is sufficient evidence in the record to support the hearing officer's resolution of the injury and disability issues.

The claimant was working as a security guard at the time of her injury. The security service provided security guards to the college as part of a contract with the college. The claimant was paid by the security company, and the contract between the college and the security company provided that the security company would maintain the right of control over the security guards it provided to the college. There was evidence that from time to time the security guards provided by the security company would be called upon by a custodian for the college to provide assistance in minor custodial services. On \_\_\_\_\_, the custodian requested that the claimant assist him in setting up some tables and chairs. While assisting the custodian setting up the tables and chairs, the claimant was injured.

The hearing officer found that at the time of injury the claimant was a borrowed servant of the college, and therefore, an employee of the college for workers' compensation purposes. The college in its appeal contends that this is legally incorrect because the contract between the college and the security service determined right of control and provided that right of control remained with the security service. The college also argues that the custodian could not have exercised control over the claimant because he was not a supervisor. The carrier responds that the contract did not determine the right of control because it only determined the right of control for security

services enumerated in the contract, and the contract did not provide that the security guards provided by the security services would perform custodial services for the college.

The parties recognize that the question of whether or not the claimant was a borrowed servant of the college turns on whether the college had the right of control of the claimant's work at the time of her injury. The college is correct that generally when there is a written contract the contract will determine the issue of right of control. However, the contract here was quite specific in what services the security company was providing the college, and custodial services were not specified. Thus, while the contract remains a factor in determining the issue of right of control, it is not controlling. The issue of whether the college had the right of control of the claimant at the time of her injury is one of fact. The hearing officer is the finder of fact. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Here there was conflicting evidence on the issue of right of control. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The carrier represented at the hearing that the true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

The college represented at the hearing that the true corporate name of its insurance carrier is **ATTENTA** and the name and address for its registered agent for service of process is:

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Panel  
Manager/Judge

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Robert W. Potts  
Appeals Judge